

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

MARTINA HENRY,

Plaintiff,

v.

CAPITAL ONE BANK (USA), N.A.; CHASE
BANK USA, N.A.; WELLS FARGO
FINANCIAL NATIONAL BANK; US BANK
N.A.; LVNV FUNDING LLC; SECOND
ROUND LIMITED PARTNERSHIP;
EXPERIAN INFORMATION SOLUTIONS,
INC.; TRANS UNION, LLC; and EQUIFAX
INFORMATION SERVICES, LLC,

Defendants.

Case No. 1:15-CV-03241-CM-KNF

**ANSWER AND AFFIRMATIVE
DEFENSES OF DEFENDANT U.S.
BANK NATIONAL ASSOCIATION**

Defendant U.S. Bank National Association (“U.S. Bank”)¹ hereby submits its Answer and Affirmative Defenses to plaintiff Martina Henry’s (“Plaintiff”) Complaint:

AS TO THE PRELIMINARY STATEMENT

1. The allegations in this paragraph are descriptive in nature and do not require a response. Insofar as a response is required, the allegations are denied.

2. U.S. Bank admits that Plaintiff contacted it and alleged that she was the victim of identity theft. U.S. Bank expressly denies that it did not conduct a meaningful investigation into Plaintiff’s claims of identity theft. U.S. Bank denies the balance of the allegations in this paragraph.

3. Denied.

¹ Where an allegation is directed at multiple defendants, U.S. Bank’s response is limited solely to itself and should not be interpreted as responding to allegations against the other defendants.

4. U.S. Bank expressly denies that any of its conduct is/was unlawful or that it violated any state or federal statute. The balance of the allegations in this paragraph are descriptive in nature and do not require a response. Insofar as a response is required, the allegations are denied.

AS TO THE JURISDICTION AND VENUE

5. U.S. Bank admits that the Court has personal jurisdiction over it and subject matter jurisdiction over this action, and that venue is properly laid in the Southern District of New York.

AS TO THE PARTIES

6. U.S. Bank is without sufficient information or knowledge to respond to the allegations in this paragraph and they are therefore denied.

7. U.S. Bank is without sufficient information or knowledge to respond to the allegations in this paragraph and they are therefore denied.

8. U.S. Bank is without sufficient information or knowledge to respond to the allegations in this paragraph and they are therefore denied.

9. U.S. Bank is without sufficient information or knowledge to respond to the allegations in this paragraph and they are therefore denied.

10. U.S. Bank admits that it is authorized and qualified to do business in the State of New York. U.S. Bank denies that it is headquartered in Ohio. The balance of the allegations in this paragraph constitute conclusions of law to which no response is required. Insofar as a response is required, the allegations are denied.

11. U.S. Bank is without sufficient information or knowledge to respond to the allegations in this paragraph and they are therefore denied.

12. U.S. Bank is without sufficient information or knowledge to respond to the allegations in this paragraph and they are therefore denied.

13. U.S. Bank is without sufficient information or knowledge to respond to the allegations in this paragraph and they are therefore denied.

14. U.S. Bank is without sufficient information or knowledge to respond to the allegations in this paragraph and they are therefore denied.

15. U.S. Bank is without sufficient information or knowledge to respond to the allegations in this paragraph and they are therefore denied.

AS TO THE FACTUAL BACKGROUND

16. U.S. Bank is without sufficient information or knowledge to respond to the allegations in this paragraph and they are therefore denied.

17. U.S. Bank is without sufficient information or knowledge to respond to the allegations in this paragraph and they are therefore denied. Insofar as the allegations in this paragraph reference one or more documents, U.S. Bank avers that those documents speak for themselves.

18. U.S. Bank denies that an identity thief or thieves opened a U.S. Bank credit card in Plaintiff's name, or that an identity thief or thieves incurred charges on Plaintiff's U.S. Bank credit card and did not pay them. U.S. Bank admits that Plaintiff's U.S. Bank credit card became delinquent. U.S. Bank is without sufficient information or knowledge to respond to the balance of the allegations in this paragraph and they are therefore denied.

AS TO THE FACTS RELATING TO CAPITAL ONE ACCOUNTS

19. U.S. Bank is without sufficient information or knowledge to respond to the allegations in this paragraph and they are therefore denied.

20. U.S. Bank is without sufficient information or knowledge to respond to the allegations in this paragraph and they are therefore denied.

21. U.S. Bank is without sufficient information or knowledge to respond to the allegations in this paragraph and they are therefore denied.

22. U.S. Bank is without sufficient information or knowledge to respond to the allegations in this paragraph and they are therefore denied.

AS TO THE FACTS RELATING TO THE CHASE ACCOUNTS

23. U.S. Bank is without sufficient information or knowledge to respond to the allegations in this paragraph and they are therefore denied.

24. U.S. Bank is without sufficient information or knowledge to respond to the allegations in this paragraph and they are therefore denied.

25. U.S. Bank is without sufficient information or knowledge to respond to the allegations in this paragraph and they are therefore denied.

AS TO THE FACTS RELATING TO THE U.S. BANK ACCOUNT

26. Denied.

27. U.S. Bank denies that identity thieves incurred charges on Plaintiff's U.S. Bank credit card and failed to make payments. U.S. Bank admits that Plaintiff's U.S. Bank account was transferred to Portfolio Recovery Associates LLC. U.S. Bank is without sufficient information or knowledge to respond to the allegations in this paragraph and they are therefore denied.

28. U.S. Bank is without sufficient information or knowledge to respond to the allegations in this paragraph and they are therefore denied.

29. The allegations in this paragraph reference documents that speak for themselves. Insofar as any further response is necessary, the allegations are denied.

30. U.S. Bank denies that it failed to conduct a reasonable investigation of Plaintiff's disputes. U.S. Bank admits that it did not remove Plaintiff's U.S. Bank account from her credit report.

AS TO THE FACTS RELATING TO THE WELLS FARGO ACCOUNT

31. U.S. Bank is without sufficient information or knowledge to respond to the allegations in this paragraph and they are therefore denied.

32. U.S. Bank is without sufficient information or knowledge to respond to the allegations in this paragraph and they are therefore denied.

33. U.S. Bank is without sufficient information or knowledge to respond to the allegations in this paragraph and they are therefore denied.

34. U.S. Bank is without sufficient information or knowledge to respond to the allegations in this paragraph and they are therefore denied.

AS TO THE FACTS RELATING TO THE LVNV FUNDING ACCOUNTS

35. U.S. Bank is without sufficient information or knowledge to respond to the allegations in this paragraph and they are therefore denied.

36. U.S. Bank is without sufficient information or knowledge to respond to the allegations in this paragraph and they are therefore denied.

37. U.S. Bank is without sufficient information or knowledge to respond to the allegations in this paragraph and they are therefore denied.

38. U.S. Bank is without sufficient information or knowledge to respond to the allegations in this paragraph and they are therefore denied.

AS TO THE FACTS RELATING TO THE SECOND ROUND ACCOUNT

39. U.S. Bank is without sufficient information or knowledge to respond to the allegations in this paragraph and they are therefore denied.

40. U.S. Bank is without sufficient information or knowledge to respond to the allegations in this paragraph and they are therefore denied.

41. U.S. Bank is without sufficient information or knowledge to respond to the allegations in this paragraph and they are therefore denied.

42. U.S. Bank is without sufficient information or knowledge to respond to the allegations in this paragraph and they are therefore denied.

AS TO THE FACTS RELATING TO THE PLAINTIFF'S DAMAGES

43. U.S. Bank is without sufficient information or knowledge to respond to the allegations in this paragraph and they are therefore denied.

AS TO THE FIRST CAUSE OF ACTION

44. U.S. Bank repeats and realleges its foregoing response as if fully set forth herein.

45. U.S. Bank is without sufficient information or knowledge to respond to the allegations in this paragraph and they are therefore denied.

46. Denied.

47. U.S. Bank is without sufficient information or knowledge to respond to the allegations in this paragraph and they are therefore denied.

48. U.S. Bank is without sufficient information or knowledge to respond to the allegations in this paragraph and they are therefore denied.

49. U.S. Bank is without sufficient information or knowledge to respond to the allegations in this paragraph and they are therefore denied.

50. U.S. Bank is without sufficient information or knowledge to respond to the allegations in this paragraph and they are therefore denied.

51. U.S. Bank is without sufficient information or knowledge to respond to the allegations in this paragraph and they are therefore denied.

52. U.S. Bank is without sufficient information or knowledge to respond to the allegations in this paragraph and they are therefore denied.

53. U.S. Bank is without sufficient information or knowledge to respond to the allegations in this paragraph and they are therefore denied.

54. Denied.

55. Denied.

56. U.S. Bank expressly denies that it violated any statute, including the FCRA. U.S. Bank is without sufficient information or knowledge to respond to the balance of the allegations in this paragraph and they are therefore denied.

57. Denied.

AS TO THE SECOND CAUSE OF ACTION

58. U.S. Bank repeats and realleges its foregoing response as if fully set forth herein.

59. U.S. Bank is without sufficient information or knowledge to respond to the allegations in this paragraph and they are therefore denied.

60. U.S. Bank is without sufficient information or knowledge to respond to the allegations in this paragraph and they are therefore denied.

61. U.S. Bank is without sufficient information or knowledge to respond to the allegations in this paragraph and they are therefore denied.

62. U.S. Bank is without sufficient information or knowledge to respond to the allegations in this paragraph and they are therefore denied.

63. U.S. Bank is without sufficient information or knowledge to respond to the allegations in this paragraph and they are therefore denied.

64. The allegations in this paragraph are descriptive in nature and do not require a response. Insofar as a response is required, the allegations are denied.

AS TO THE THIRD CAUSE OF ACTION

65. U.S. Bank repeats and realleges its foregoing response as if fully set forth herein.

66. U.S. Bank is without sufficient information or knowledge to respond to the allegations in this paragraph and they are therefore denied.

67. U.S. Bank is without sufficient information or knowledge to respond to the allegations in this paragraph and they are therefore denied.

68. U.S. Bank is without sufficient information or knowledge to respond to the allegations in this paragraph and they are therefore denied.

69. U.S. Bank is without sufficient information or knowledge to respond to the allegations in this paragraph and they are therefore denied.

70. U.S. Bank is without sufficient information or knowledge to respond to the allegations in this paragraph and they are therefore denied.

71. U.S. Bank is without sufficient information or knowledge to respond to the allegations in this paragraph and they are therefore denied.

72. U.S. Bank is without sufficient information or knowledge to respond to the allegations in this paragraph and they are therefore denied.

73. U.S. Bank is without sufficient information or knowledge to respond to the allegations in this paragraph and they are therefore denied.

74. U.S. Bank is without sufficient information or knowledge to respond to the allegations in this paragraph and they are therefore denied.

RESERVATION OF RIGHTS

U.S. Bank reserves the right to move the Court to supplement and/or amend its responses to the Complaint at the completion of factual discovery and/or move the Court to conform this Answer to the evidence. U.S. Bank further states that it may move the Court for permission to

assert other defenses when, and if, they become appropriate during this action. Insofar as any of the foregoing allegations in the Complaint have not been expressly admitted or denied, they are hereby denied.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim against U.S. Bank upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claim is barred by estoppel, unclean hands and waiver.

THIRD AFFIRMATIVE DEFENSE

Plaintiff has failed to join a necessary party.

FOURTH AFFIRMATIVE DEFENSE

U.S. Bank did not breach any duty or obligation allegedly owed to Plaintiff.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred because U.S. Bank acted in good faith to conform with all rules, regulations and interpretations of law relevant to issues raised in Plaintiff's Complaint.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by her failure to exercise due diligence to protect her interests and avoid injury.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by her failure to satisfy all conditions precedent.

EIGHTH AFFIRMATIVE DEFENSE

To the extend Plaintiff has suffered any damages, her claims are barred, in whole or in part, by her failure to mitigate damages.

NINTH AFFIRMATIVE DEFENSE

U.S. Bank denies Plaintiff was damaged by U.S. Bank.

TENTH AFFIRMATIVE DEFENSE

No action by U.S. Bank was the actual cause of injury to Plaintiff.

ELEVENTH AFFIRMATIVE DEFENSE

No action by U.S. Bank was the proximate cause of any harm Plaintiff has allegedly suffered.

TWELFTH AFFIRMATIVE DEFENSE

Any damages Plaintiff may have incurred are the result of acts or omissions of individuals or entities that U.S. Bank did not retain, reserve or exercise control over, and for which U.S. Bank is not legally responsible.

THIRTEENTH AFFIRMATIVE DEFENSE

Any damages suffered by Plaintiff were due to the affirmative actions and/or omissions of Plaintiff and do not give rise to any liability of Defendants.

FOURTEENTH AFFIRMATIVE DEFENSE

Any damages Plaintiff may have experienced are the result of an intervening or superseding cause for which U.S. Bank is not legally responsible.

FIFTEENTH AFFIRMATIVE DEFENSE

U.S. Bank acted in good faith at all times and without malice or intent to injure the Plaintiff.

SIXTEENTH AFFIRMATIVE DEFENSE

U.S. Bank did not make any false or misleading representations to Plaintiff.

SEVENTEENTH AFFIRMATIVE DEFENSE

At all relevant times, U.S. Bank maintained and followed reasonable procedures to prevent any violation of any statute.

EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred because U.S. Bank followed all statutory and contractual requirements in connection with Plaintiff's account.

Dated: May 22, 2015

Respectfully submitted,

**PODVEY, MEANOR, CATENACCI, HILDNER,
COCOZIELLO & CHATTMAN, P.C.**

/s/ Daniel Ginzburg

By: Daniel Ginzburg (DG-2824)

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